

# TIGARD MUNICIPAL CODE

## Chapter 7.24 OFFENSES AGAINST PROPERTY.

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### **7.24.010 Theft--Definitions.**

As used in this chapter, unless the context requires otherwise:

(1) "Appropriate property of another to oneself or a third person" or "appropriate" means

to:

(a) Exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of such property; or

(b) Dispose of the property of another for the benefit of oneself or a third person.

(2) "Deprive another of property" or "deprive" means to:

(a) Withhold property of another or cause property of another to be withheld from him permanently or so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him; or

(b) Dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

(3) "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

(4) "Owner of property taken, obtained or withheld" or "owner" means any person who has a right to possession thereof superior to that of the taken, obtainer or withholder.

(5) "Property" means any article, substance or thing of value, including but not limited to, money,, tangible and intangible personal property, real property, choses-in-action, evidence of debt or of contract. (Ord. 84-65 §2(Exhibit A(part)), 1984).

### **7.24.020 Theft--Accusation--Proof.**

(a) Conduct denominated theft under

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Section 7.24.040 constitutes a single offense.

(b) An accusation of theft is sufficient if it alleges that the defendant committed theft of property of the nature or value required for the commission of the crime charged, without designating the particular way or manner in which the theft was committed.

(c) Proof that the defendant engaged in conduct constituting theft as defined in Section 7.24.040 is sufficient to support any information or complaint for theft. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.030 Theft--Defined.**

A person commits "theft" when, with intent to deprive another of property or to appropriate property to himself or to a third person, he:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof; or

(2) Commits theft of property lost, mislaid or delivered by mistake as provided in Section 7.24.050; or

(3) Commits theft by deception as provided in Section 7.24.060; or

(4) Commits theft by receiving as provided in Section 7.24.070. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.040 Theft--In The Second Degree.**

(a) A person commits the crime of "theft in the second degree" if, by other than extortion, he:

(1) Commits theft as defined in Section 7.24.030; and

(2) The total value of the property in a single or aggregate transaction is fifty dollars or

more but is under two hundred dollars in a case of theft by receiving and under five hundred dollars in any other case.

(b) Theft in the second degree is a Class A misdemeanor. (Ord. 87-54 §1, 1987; Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.045 Theft--In The Third Degree.**

(a) A person commits the crime of theft in the third degree if, by other than extortion, he:

(1) Commits theft as defined in Section 7.24.030; and

(2) The total value of the property in a single or aggregate transaction is under fifty dollars.

(b) Theft in the third degree is a Class C misdemeanor. (Ord. 87-54 §2, 1987).

## **7.24.050 Theft--Lost, Mislaid Property.**

A person who comes into control of property of another that he knows or has good reason to know to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, commits theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to the owner. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.060 Theft--By Deception.**

(a) A person, who obtains property of another thereby, commits "theft by deception" when, with intent to defraud, he:

(1) Creates or confirms another's false impression of law, value, intention or other state of mind which the actor does not believe to be true, or;

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(2) Fails to correct a false impression which he previously created or confirmed; or

(3) Prevents another from acquiring information pertinent to the disposition of the property involved; or

(4) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or

(5) Promises performance which he does not intend to perform or knows will not be performed.

(b) "Deception" does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary persons in the group addressed.

(c) In a prosecution for theft by deception the defendant's intention or belief that a promise would not be performed shall not be established by or inferred from the fact alone that such promise was not performed.

(d) In a prosecution for theft by deception committed by means of a bad check, it is prima facie evidence of knowledge that the check or order would not be honored if:

(1) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or

(2) Payment is refused by the drawee for lack of funds, upon presentation within thirty days after the date of utterance, and the drawer fails to make good within ten days after receiving notice of refusal. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.070 Theft--By Receiving.**

(a) A person commits "theft by receiving" if he receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property was the subject of theft.

(b) "Receiving" means acquiring possession, control or title, or lending on the security of the property. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.080 Right Of Possession.**

Right of possession of property is as follows:

(1) A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds the property from him by means of theft.

(2) A joint or common owner of property shall not be deemed to have a right of possession of the property superior to that of any other joint or common owner of the property.

(3) In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest in the property, even if legal title to the property lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.090 Value Of Stolen Property.**

For the purposes of this chapter, the value of property shall be ascertained as follows:

(1) Except as otherwise specified in this section, "value" means the market value of the

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property at the time and place of the crime, or if such cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value, shall be evaluated as follows:

(A) The value of an instrument constituting an evidence of debt, including but not limited to, a check, draft or promissory note, shall be considered the amount due or collectible thereon or thereby.

(B) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be considered the greatest amount of economic loss which the owner might reasonably suffer because of the loss of the instrument.

(3) When the value of the property cannot reasonably be ascertained, it shall be presumed to be an amount less than two hundred dollars. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.100 Theft--Defenses.**

(a) In a prosecution for theft it is a defense that the defendant acted under an honest claim or right, in that:

(1) He was unaware that the property was that of another; or

(2) He reasonably believed that he was entitled to the property involved or had a right to acquire or dispose of it as he did.

(b) In a prosecution for "theft by receiving," it is a defense that the defendant received, retained, concealed or disposed of the property

with the intent of restoring it to the owner.

(c) It is a defense that the property involved was that of the defendant's spouse, unless the parties were not living together as man and wife and were living in separate abodes at the time of the alleged theft. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.110 Theft--Of Services.**

(a) A person commits the crime of theft of services if:

(1) With intent to avoid payment therefor, he obtains services that are available only for compensation by force, threat, deception or other means to avoid payment for the services; or

(2) Having control over the disposition of labor or of business, commercial or industrial equipment or facilities of another, he uses or diverts to the use of himself or a third person such labor, equipment or facilities with intent to derive a commercial benefit for himself or a third person not entitled thereto.

(b) As used in this section, "services" includes but is not limited to, labor, professional services, toll facilities, transportation, telephone or other communications service, entertainments, the supplying of food, lodging or other accommodations in hotels, restaurants or elsewhere, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water.

(c) Absconding without payment or offer to pay for hotel, restaurant or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception.

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(d) Theft of services is a Class A misdemeanor if the aggregate total amount of services the person obtains or attempts to obtain is under two hundred dollars. (Ord. 8465 §2(Exhibit A(part)), 1984).

## **7.24.120 Criminal Trespass--Definitions.**

As used in Sections 7.24.120 through 7.24.180, except as the context requires otherwise:

(1) "Building" in addition to its ordinary meaning, includes any booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, including but not limited to, separate apartments, offices or rented rooms, each unit is, in addition to being a part of such building, a separate building.

(2) "Dwelling" means a building which regularly or intermittently is occupied by a person lodging therein at night, whether or not a person is actually present.

(3) "Enter or remain unlawfully" means:

(A) To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when the entrant is not otherwise licensed or privileged to do so; or

(B) To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge.

(4) "Open to the public" means premises which by their physical nature, function, custom, usage, notice or lack thereof or other circumstances at the time would cause a reasonable person to believe that no permission to enter or remain is required. Privately owned premises displaying a sign prohibiting door-to-

door solicitation or canvassing are not open to the public. Privately owned premises are not open to the public, including door-to-door solicitors and canvassers, between nine p.m. and eight a.m.

(5) "Person in charge" means a person, his representative or his employee who has lawful control of premises by ownership, tenancy, official position or other legal relationship. It includes but is not limited to the person, or holder of a position, designated as the person or position-holder in charge by the Governor, board, commission or governing body of any political subdivision of this state.

(6) "Premises" includes any building and any real property, whether privately or publicly owned.

(7) "Property of another" means property in which anyone other than the actor has a legal or equitable interest that the actor has no right to defeat or impair, even though the actor may also have such an interest in the property. (Ord. 83-01 §2, 1988; Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.130 Criminal--In The Second Degree.**

(a) A person commits the crime or "criminal trespass in the second degree" if he enters or remains unlawfully in or upon premises.

(b) Criminal trespass in the second degree is a Class C misdemeanor. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.135 Criminal Trespass--School District #23J.**

(a) A person commits the crime of criminal trespass in the second degree if he permits, brings or allows any horse, mule, donkey or other such animal, whether or not attended, at any time on any site or lands of School District #23J within

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the City, improved for school purposes.

(b) A person commits the crime of criminal trespass in the second degree if he uses, operates or rides upon any motorized vehicle on or within any lands of School District #23J within the City, improved for school site purposes, other than on or within driveways, parking areas and other areas specially designated for vehicular use, unless directed to do so by the administrative officers of the district.

(c) Violation of this section shall constitute a Class C misdemeanor and upon conviction shall be subject to the penalties as provided by Chapter 7.16. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.137 Criminal Trespass In The Second Degree By A Guest.**

A guest commits the crime of trespass in the second degree if that guest intentionally remains unlawfully in a transient lodging after the departure date of the guest's reservation without the approval of the hotelkeeper. "Guest" means a person who is registered at a hotel and is assigned to transient lodging, and includes any individual accompanying the person. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.140 Criminal Trespass--In The First Degree.**

(a) A person commits the crime of "criminal trespass in the first degree" if he enters or remains unlawfully in a dwelling.

(b) Criminal trespass in the first degree is a Class A misdemeanor. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.145 Criminal Trespass While In Possession Of Firearm.**

(a) A person commits the crime of criminal trespass while in possession of a firearm who,

while in possession of a firearm, enters or remains unlawfully in or upon premises.

(b) Criminal trespass while in possession of a firearm is a Class A misdemeanor. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.150 Reckless Burning.**

(a) A person commits the crime of burning if he recklessly damages property or another by fire or explosion.

(b) Reckless burning is a Class A misdemeanor. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.160 Criminal Mischief--In The Third Degree.**

(a) A person commits the crime of "criminal mischief in the third degree" if, with intent to cause substantial inconvenience to the owner or to another person, and having no right to do so nor reasonable ground to believe that he has such right, he tampers or interferes with property of another.

(b) Criminal mischief in the third degree is a Class C misdemeanor. (Ord. 84-65 §2(Exhibit A(part)), 1984).

## **7.24.170 Criminal Mischief--In The Second Degree.**

(a) A person commits the crime of "criminal mischief in the second degree" if:

(1) He violates Section 7.24.160 and as a result thereof, damages property in an amount exceeding one hundred dollars; or

(2) Having no right to do so nor reasonable ground to believe that he has such right, he intentionally damages property of

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another, or he recklessly damages property of another in an amount exceeding one hundred dollars.

(b) Criminal mischief in the second degree is a Class A misdemeanor. (Ord. 84-65 §2(Exhibit A(part)), 1984).

### **7.24.180 Possession Of Burglar's Tools.**

(a) A person commits the crime of "possession of burglar's tools" if he possesses any burglar tool with the intent to use the tool or knowing that some person intends to use the tool to commit or facilitate a forcible entry into premises or theft by a physical taking.

(b) "Burglar tool" means an acetylene torch, electric arc, burning bar, thermal lance, oxygen lance or other similar device capable of burning through steel, concrete or other solid material, or nitroglycerine, dynamite, gunpowder or any other explosive, tool, instrument or other article adapted, designed or commonly used for committing or facilitating a forcible entry into premises or theft by a physical taking.

(c) Possession of burglar's tools is a Class A misdemeanor. (Ord. 84-65 §2(Exhibit A(part)), 1984).

### **7.24.190 Dog Poisoning.**

(a) A person commits the offense of "poisoning a dog or dogs" if with intent to kill or injure any dog or dogs, he puts out or places, where it is likely to be eaten by any dog or dogs, any meat, food or substance containing poison, ground glass or other substance likely to kill or seriously injure any dog.

(b) The offense of poisoning dogs is a Class B misdemeanor. (Ord. 84-65 §2(Exhibit A(part)), 1984).

### **7.24.200 Destruction Of Official Notices Or Signs.**

(a) A person commits the offense of "destruction of official notices or signs" if he defaces or tears down any official notice or bulletin, or any official sign or signal posted or placed in conformity with law.

(b) Destruction of official notices or signs is a violation. (Ord. 84-65 §2(Exhibit A(part)), 1984).■